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ABSTRACT

The U.S. experiment in religious liberty has enormous significance for the United States and for the world. The challenging dilemma of living with the deepest religious differences, as it is currently being met in the United States, is explored in this essay. The point that U.S. success or failure in attempts to deal with religious liberty has global significance is argued in four steps. First, what is meant by public philosophy, or common vision of the common good, is clarified. Second, the case is made as to why the notion of religious liberty remains important to the public philosophy today. The third step in the discussion is an analysis of the factors behind recurring conflicts over religion and public life, and an assessment of what they mean for religious liberty and public justice in the future. The fourth, and final, step in the argument is an examination of the concept of chartered pluralism and its contribution to the current problems. Chartered pluralism is a vision of religious liberty in public life that seeks to forge a compact, across the deep differences of a pluralistic society, concerning rights, responsibilities, and respect. (DB)

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MAKING THE WORLD SAFE FOR DIVERSITY

Religious Liberty and Social Harmony in a Pluralistic Age

Os Guinness

A paper prepared for the
Third International Religious Liberty Congress
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MAKING THE WORLD SAFE FOR DIVERSITY

Religious Liberty and Social Harmony in a Pluralistic Age

George Washington's home, Mount Vernon, is among America's most visited sites. But one of the most fascinating things at Mount Vernon is one of the least noticed—the key to the Bastille, the forbidding Paris fortress whose fall on July 14th, 1789, became the symbol of the French Revolution.

The key hangs in the hall at Mount Vernon, oversized for its classically-proportioned surroundings and often overlooked. But it once spoke eloquently for the highest hopes in both nations. Six weeks after the ratification of the U.S. Constitution in September 1787, Jefferson rejoiced at the meeting of the Estates General and the prospect of applying revolutionary American principles to France. In that same spirit, the Marquis de Lafayette took the key of the Bastille in 1789 and sent it to his good friend Washington as a symbol of their common vision of the future.

Their hopes were to be dashed. Sobered by the reign of terror and the revolutionary ugliness from Robespierre and Danton to Napoleon, both Americans and French supporters of the United States revised their views. Gouverneur Morris, for example, the U.S. Ambassador to France, wrote home in disgust: "They want an American Constitution without realizing, they have no Americans to uphold it."

That 200 year old discussion sounds astonishingly fresh in 1989 because of the swirling debate that surrounds the bicentennial of the French revolution in July and the brutal crushing of China's democracy movement in Tiananmen Square in June.

Viewed from an international perspective, two of the recurring issues bear directly on our hope of seeing the extension of religious liberty throughout the world. First, how realistic is it to view democracy as a model set of political arrangements "for export"? The best answer, I believe,

is that institutions and political arrangements can be exported, but it is far harder to do so when it comes to ideals and assumptions. Experience shows that it is easier to export or import such things as free, recurrent elections, separation of executive and judiciary and respect for rights and civil liberties than it is to export ideals. Experience also show that it can be effective to introduce democracy through these means even when a nation does not share the ideals which gave rise to democracy in the first place. For example, the introduction of democracy to Japan was by General McArthur's none too democratic imposition, just as the success of democracy in India is hardly attributable to India's commitment to Jewish, Christian or Humanist ideals.

Second, what is the role of technology as a force for freedom and democratic change? The best answer, again in brief, is that the new linking of modern communication with optimism and freedom is a welcome redress of George Orwell's imbalance. But it does not replace it. For one thing, as we have seen in China with the authorities arresting dissidents on the evidence stolen from Western television feeds, the new technologies can work for repression as well as liberation. For another, those who stress correctly that the human impulse toward freedom is universal tend to forget that so also is the countervailing human impulse toward order.

When we look at these same issues from the perspective of a single nation—in this case, the United States—the issues can become even more potent because they touch on the deepest sources of historical self-understanding and contemporary self-awareness. Freedom, democracy, technology and expansion are so interwoven in American experience that questions about any or all of them can be viewed as troubling. Is American democracy unique and imitable or is it universal and imperialistic? Is the American project finally an “experiment” that is open-ended and precarious or is it a destiny that is providential? As many have discovered to their cost, when such issues are explored the space between the American “boosters,” who see no problems, and the American “blamers,” who see no answers, is sometimes uncomfortably small.

In a similar way, my argument here is a "third way" argument between two other extremes. On the one hand, against those, largely Americans, who assert the "export potential" of American democracy, I would point out a simple fact. Not only must we never presume on finding American assumptions **outside** America, we must also never presume that American assumptions have stayed the same **within** America. An early question must always be: What is the condition of the ideal in the U.S. today? On the other hand, against those, largely non-Americans, who reject the international relevance of America altogether, I would point out another fact. As history's "first new nation," the United States is so consciously and systematically a political answer to the opportunity and challenge of modernity that there are very few profound modern questions on which the American experience does not shed light.

In that spirit of realism and balance, I would invite you to consider the present stage of the American experiment in religious liberty and to see its extraordinary significance for the United States itself and even for the world. At stake in America currently is the challenging dilemma of living with out deepest—that is, our religiously and ideologically intense—differences. If this challenge is met and overcome constructively, both the American republic and the world can gain. If it is not, the world's boldest and so far most successful experiment in religious liberty will have failed a critical test and the world as a whole will be the poorer.

The Conflicts and their Context

The third step in the argument is to analyze the factors behind the recurring conflicts over religion and public life, and assess what they mean for religious liberty and public justice in the future.

The conflicts themselves need no elaboration, though it is helpful to draw a distinction between cases where religion itself is directly the issue and cases where its influence is indirect. Abortion is the principal example of the latter and examples of the former are common—school prayer and New Age meditation, creation science, secular humanism, textbook tailoring, prayer before high school sporting events, Muslim prayer mats in

government offices, Gideon's Bibles in hotel rooms, the Ten Commandments on school walls, blasphemy in films and novels, the Pledge of Allegiance, Mormon polygamy, "Christian Nation" resolutions and so on. For a full generation now the issue of religion and public life has been highly contentious, with an endless series of disputes and the whole subject surrounded by needless ignorance and fruitless controversy, including at the highest levels. Too often, debates have been sharply polarized, controversies dominated by extremes, resolutions sought automatically through litigation, either of the Religious Liberty clauses set against the other one and any common view of a better way lost in the din of irreconcilable differences and insistent demands.

At some point, however, the temptation is to take a quick glance at the contestants, apportion the blame, enlist on one side or another, and treat the whole problem as largely political and capable of a political solution. From that perspective, the problem is one which has been created by an ideological clash (the fundamentalists versus the secularists) that overlaps with a Constitutional clash (the accommodationists versus the separationists) that overlaps with a psychological clash (the "bitter-enders," who insist on commitment regardless of civility, versus the "betrayers," who insist on civility regardless of commitment) which has produced, in turn, two extremist tendencies (the "removers," who would like to eradicate all religion from public life, versus the "reimposers," who would like to impose their version of a past or future state of affairs on everyone else)—all this, of course, potentially reinforced by technological factors, such as direct mail and its shameless appeals to fear and anger.

Such analyses may be accurate as far as they go. But they stop before they take into account some of the deepest factors, which means they rule out some of the most effective solutions. Of several additional factors, one is especially important to this argument. It concerns *the recent expansion of pluralism*. This is a worldwide phenomenon that links current American tensions to similar trends around the globe. How do we live with each other's deepest differences? That simple question has been transformed by modernity into one of the world's most pressing dilemmas. On a small

planet in a pluralistic age the all too common response has been bigotry, fanaticism, terrorism and state repression.

Expanding pluralism is no stranger to the American experience. It has always been a major theme in our story, with tolerance generally expanding behind pluralism. But the last generation has witnessed yet another thrust forward in religious pluralism in two significant ways.

First, American pluralism now goes beyond the predominance of Protestant-Catholic-Jewish and includes sizeable numbers of almost all the world's great religions (Buddhist and Muslim, in particular). Second, it now goes beyond religion altogether to include a growing number of Americans with no religious preference at all (In 1962, as in 1952, secularists—or the so-called “religious nones”—were 2 percent of Americans. Today they are between 10 and 12 percent).¹

The shock waves caused by this latest explosion can be observed at two different levels in American society. In the first place, the effect of exploding diversity can be seen in the demographic make-up of contemporary American society. The state of California, for example, has America's most diverse as well as its largest population. It now accepts almost one-third of the world's immigration and represents at the close of the century what New York did at the start—the point of entry for millions of new Americans.²

California's schools have a “minority majority” in all public school enrollments. Soon after the year 2000 that will be true of the population of California as a whole. (The same situation already exists in all of the nation's 25 largest city school systems, and half of the states have public school populations which are more than 25 percent minorities.³) The result is a remarkable mix of the diverse cultures of Africa, Asia, Europe and Latin America. It will also be as challenging a project in culture-blending as New York was in nation-building nine decades ago, and Boston was at the birth of the public school movement a century and a half ago.

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The effect of the exploding diversity can also be seen in what is a form of cultural breakdown—collapse of the previously accepted understandings of the relationship of religion and public life and the triggering of the culture wars. As a result, a series of bitter, fruitless contentions over religion and politics has erupted, extremes have surfaced, the resort to law court has become almost reflexive, many who decry the problems are equally opposed to solutions to them, and in the ensuing din of charge and countercharge any sense of common vision for the common good has been drowned.

As always with the trends of modernity, the consequences of increased pluralism are neither unique to America nor uniform throughout the world. The disruptive effects can be seen elsewhere in the world, even in totalitarian societies (such as the challenge of the republics to the Soviet Union) and in democratic nations with long traditions of racial and linguistic homogeneity (such as the challenge of new immigrants in Britain).

Nor are the consequences simple. On the one hand, increased pluralism deepens old tensions. Under the challenge of "all those others," many are seemingly pressured to believe more weakly in their own faith, to the point of compromise: the more choice and change, the less commitment and continuity. In reaction, however, others tend to believe more strongly, to the point of contempt for the faith of others.

On the other hand, increased pluralism helps develop new trends. Today's dominant tensions are not so much between distinct religions and denominations. As often as not, they are between the more orthodox and the more contemporary within the same denomination (for example, the recent divisions within the Southern Baptist Convention), or between an alliance of the more orthodox in several religions who oppose the more contemporary in those same groups (for example, the pro-life coalition of conservative Protestants, Catholics, Mormons and so on).

In sum, like it or not, modern pluralism stands squarely as both the child of, and the challenger to, religious liberty—whether because of its

presence (given the democratic conditions arising out of the Reformation and the Wars of Religion), its permanence (given the likely continuation of these conditions in the foreseeable future), or its premise (that a single, uniform doctrine of belief can only achieve dominance in a pluralistic society by two means: through persuasion, which is currently unlikely because unfashionable, or through coercion by the oppressive use of state power, which at anytime is both unjust and unfree).

Not surprisingly, these developments and their logic have hit hard the trio of American institutions which have been so instrumental in tempering the forces of faction and self-interest and helping transform American diversity into a source of richness and strength: the Religious Liberty clauses of the First Amendment, the Public School Movement and the American public philosophy. The upshot is that the public schools have often become the storm center of the controversies, one or other of the twin clauses of the First Amendment have been looked to as the sole arbiter in the partisan conflicts, and the common vision for the common good becomes the loser.

Only when the full extent of this damage and the full range of the causes have been taken into account can any prospective solutions be given realistic consideration.

A Common Vision for the Common Good

The first step in the argument is to clarify what is meant by *public philosophy*, or common vision of the common good. A defining feature of the United States is that, from the very beginning, it has been a nation by intention and by ideas. One of America's greatest achievements and special needs has been to create, out of the mosaic of religious and cultural differences, a common vision for the common good—in the sense of a widely shared, almost universal, agreement on what accords with the common ideals and interests of America and Americans.

Mostly unwritten, often half-conscious, never to be mistaken for unanimity, this common vision has served a vital purpose. It has offset the natural conflict of interests in a pluralistic society, and in particular that

impulse toward arbitrariness which is the scourge of totalitarianism and democracy alike. In doing so it has been the binding that maintains unity to balance the richness and pressures of diversity, and transmits a living heritage to balance the dynamism of progress. Most Americans may never have been conscious of any such thing, let alone the term, *public philosophy*, but America itself has always been a working model of one, a public philosophy in action. For Americans, consensus has always been a matter of compact over common ideals as well as compromise over competing interests.

Defined in this way, the notion of public philosophy needs to be distinguished from two similar but different notions. First, this use of public philosophy is different from those who use the term (quite legitimately) to refer to an individual's personal philosophy of public affairs, and thus to the place of public affairs in his or her worldview. In contrast, public philosophy in this paper refers expressly to public affirmations shared in common with other citizens. A public philosophy should not only be accessible to others in principle; it is unworthy of the name unless it is actually shared in practice. Second, this use of public philosophy is quite different from civil religion. Like civil religion, public philosophy as used here deals with affirmations held in common. But unlike civil religion, the public philosophy does not require the common affirmations to be regarded as sacred or semi-sacred in themselves. For most Americans, their commitment to the public philosophy is rooted in their own religious beliefs, but the public affirmations are not themselves religious and it is for this reason that they can be held in common with people of other faiths and no faith.

There have undoubtedly been great changes in this concept over time, most noticeably the softening between the harder-edged notion of Puritan covenant and the rather vague mid-twentieth century notion of consensus. Equally, the very strength of the notion has sometimes created problems, such as the influence of consensus-thinking on the blind eye turned to cultural diversity and on the countenancing of evils, such as the maltreatment of Blacks and Native Americans. These are therefore obvious reasons why the subject has recently fallen into disrepute, why its

very mention is challenged in some circles, and why there are sometimes competing proposals among proponents of its recovery.

What is certain, however, is that the weakening or disappearance of the public philosophy has definite consequences too, and from Walter Lippmann's critique of public opinion to the current Volcker Commission on American public service, a deepening stream of analyses have made this connection and redressed the imbalance. What is also certain is that, because people have different and changing values, the common vision for the common good is never static. It is not in the realm of a final answer. Adjustment and readjustment are an ongoing requirement of American democracy. Since no generation declares, lives and preserves this common vision in its entirety, there is a need for reaffirmation and renewal in every generation. For Americans to become, in Walter Lippmann's words, "a people who inhabit the land with their bodies without possessing it with their souls" would be a sure step toward disaster.⁴

Consensual agreements over the place of religious liberty in public life is only one component of the wider public philosophy but a vital one. Equally, such a consensus is only one of a trio of agencies (the Constitution, the courts, and the consensus) that are all vital to sustaining religious liberty. But because of the personal importance of faiths to individuals and to communities of faith in America, and the public importance of both to American national life, a common vision of religious liberty in public life is critical to both citizens and the nation. It directly affects personal liberty, civic vitality and social harmony. Far from lessening the need for a public philosophy today, expanding pluralism increases it. Indeed, for anyone who has reflected on the last generation of conflict over religion and public life, few questions in America are more urgent than a fresh agreement on how we deal are to deal with each others deepest differences in the public sphere.

The Importance of Religious Liberty

The second step in the argument is to show why the notion of religious liberty remains important to the public philosophy today. For to many Americans, especially among the thought leaders, the question of religion in public life has become unimportant. It is viewed as a non-issue or a nuisance factor—something which should be purely a private issue, which inevitably becomes messy and controversial when it does not stay so, and which should therefore revert to being private as quickly as possible.

A more helpful way of seeing things would be to see that the swirling controversies that surround religion and public life create a sort of sound barrier effect: At one level, the issue appears all passions, problems, prejudices. But break through to a higher level and it touches on several of the deepest questions of human life in the modern world. Once these are appreciated, it clearly becomes in the highest interest of the common good to resolve the problems raised rather than ban the topic out of personal disdain or fear.

There are at least five central reasons why religious liberty remains a vital part of the public philosophy. First, religious liberty, or freedom of conscience, is a precious, fundamental and inalienable human right—the freedom to reach, hold, freely exercise or change our beliefs independent of governmental control. Prior to and existing quite apart from the Bill of Rights which protects it, religious liberty is not a second-class right, a constitutional redundancy or a sub-category of free speech. Since it does not finally depend on the discoveries of science, the favors of the state and its officials, and the vagaries of tyrants or majorities, it is a right that may not be submitted to any vote nor encroached upon by the expansion of the bureaucratic state. There is no more searching test of the health of the public philosophy than this non-majoritarian standard: “A society is only as just and free as it is respectful of this right for its smallest minorities and least popular communities.”⁵ Religious liberty has correctly been called America’s “first liberty.”

Unless the public philosophy respects and protects this right for all Americans, the American promise of individual freedom and justice is breached.

Second, the Religious Liberty clauses of the First Amendment are the democratic world's most distinctive answer to one of the entire world's most pressing questions: How do we live with our deepest—that is, our religiously intense—differences?

Some countries in the world exhibit a strong political civility that is directly linked to their weak religious commitments; and others a strong religious commitment directly linked to their weak political civility. Owing to the manner of the First Amendment's ordering of religious liberty and public life, American democracy has afforded the fullest opportunity for strong religious commitment and strong political civility to complement, rather than threaten, each other.

Unless the public philosophy respects and protects this distinctive American achievement, the American promise of democratic liberty and justice will be betrayed.

Third, the Religious Liberty clauses lie close to the genius of the American experiment. Not simply a guarantee of individual and communal liberty, the First Amendment's ordering of the relationship of religion and public life is the boldest and most successful part of the entire American experiment. Daring in its time, distinctive throughout the world both then and now, it has proved decisive in shaping key aspects of the American story. It is not too much even to say that as the Religious Liberty clauses go, so goes America.

Unless the public philosophy respects and protects this remarkable American ordering, the civic vitality of the American republic will be sapped.

Fourth, the Religious Liberty clauses are the single, strongest non-theological reason why free speech and the free exercise of religion have been closely related and why religion in general has persisted more

strongly in the United States than in any other comparable modern country. In most modern countries, there appears to be an almost ironclad equation: the more modernized the country, the more secularized the country. America, however, is a striking exception to the trend, being at once the most modernized country and the most religious of modern countries.

The reason lies in the effect of the American style of disestablishment. By separating church and state, but not religion from government or public life, disestablishment does two things: it undercuts the forces of cultural antipathy built up against religious communities by church-state establishments—historically speaking, established churches have contributed strongly to their own rejection and to secularization in general. At the same time, disestablishment throws each faith onto reliance on its own claimed resources. The overall effect is to release a free and unfettered competition of people and beliefs similar to the free market competition of capitalism.

Unless the public philosophy respects and protects this enterprising relationship, both American religious liberty and public discourse will be handicapped.

Fifth, the interpretation and application of the First Amendment today touches on some of the deepest and most revolutionary developments in contemporary thought. A generation ago it was common to draw a deep dichotomy between science and religion, reason and revelation, objectivity and commitment and so on. Today such dichotomies are impossible. All thinking is acknowledged to be presuppositional. Value-neutrality in social affairs is impossible. To demand "neutral discourse" in public life, as some still do, should now be recognized as a way of coercing people to speak publicly in someone else's language and thus never to be true to their own.

Unless the public philosophy respects and protects this new (or restored) understanding, the republican requirement of free democratic debate and responsible participation in democratic life will be thwarted.

One conclusion is inescapable: The place of religious liberty in American public life is not merely a religious issue but a national issue. It is not only a private issue, but a public one. Far from simply partisan or sectarian, religious liberty is in the interests of Americans of all faiths and none, and its reaffirmation should be a singular and treasured part of the American public philosophy.

Chartered Pluralism and its Contributions

The fourth step in the argument is to examine the concept of chartered pluralism and its contribution to the current problems. Anyone who appreciates the factors behind the present conflicts is confronted with tough questions. Above all, can there be a resolution to culture wars and a readjustment to the new pluralism without endangering the logic of religious liberty in public life?

At first sight, the search for a just and commonly acceptable solution to these challenges seems as futile as squaring the circle. The question of the public role of religion in an increasingly pluralistic society appears to be a minefield of controversies, with the resulting ignorance, confusion and reluctance an understandable outcome. Yet if it is correct to trace the problem to forces such as pluralism as much as to ideologies, individuals and groups, then we have more victims than villains over this issue, and the wisest approach is to search together for a solution, not for a scapegoat.

Here is where Americans face a choice over the conflicts about religion and public life: Will they respond to the challenges of pluralism as "tribespeople," in the sense of those who seek security through solidarity and are intolerant of everything alien to their group or community? Or as "idiots," in the original Greek sense of totally private people who have no interest in or commitment to the public philosophy and the common good? Or as "citizens," in the sense of those who see themselves as members of a wider commonwealth and have mastered the knowledge and skills required in the life of the civilized city? Understood in terms of this logic, which was first introduced by John Courtney Murray in the early sixties, the present stage of the conflict offers a strategic opportunity. Extreme posi-

tions and unwelcome consequences are readily identifiable on many sides, and a new desire for consensus is evident. But where and on what grounds could consensus emerge?

The most constructive way forward is to reforge the public philosophy according to a vision of "chartered pluralism," such as articulated in the Williamsburg Charter (see Appendix for the full text). Chartered pluralism is a vision of religious liberty in public life that, across the deep differences of a pluralistic society, forges a substantive agreement, or freely chosen compact, on three things which are the "3 Rs" of religious liberty in a pluralistic society: rights, responsibilities and respect. The compact affirms, first, that religious liberty, or freedom of conscience, is a fundamental and inalienable right for peoples of all faiths and none; second, that religious liberty is a universal right joined to a universal duty to respect that right for others; and third, that the first principles of religious liberty, combined with the lessons of 200 years of Constitutional experience, require and shape certain practical guidelines by which a robust yet civil discourse may be sustained in a free society that would remain free.

Founded on such a principled pact (spelled out, of course, in far greater depth), the notion of "chartered pluralism" can be seen to give due weight to the first of its two terms. It is therefore properly a form of *chartered* pluralism, and avoids the respective weaknesses of relativism, interest-group liberalism or any form of mere "process" and "proceduralism."

But at the same time the agreement is strictly limited in both substance and in scope. It does not pretend to include agreement over religious beliefs, political policies, constitutional interpretations or even the philosophical justifications of the three parts of the compact. "Chartered pluralism" is an agreement within disagreements over deep differences that make a difference. It therefore gives due weight to the second of its two terms, and it remains a form of chartered *pluralism* that avoids the dangers of majoritarianism, civil religion or any form of overreaching consensus that is blind or insensitive to small minorities and unpopular communities.

Three features of this compact at the heart of chartered pluralism need to be highlighted indelibly, if the compact is to pass muster under the exacting conditions of expanded pluralism. First, the content of the compact does not grow from shared beliefs, religious or political, because the recent expansion of pluralism means that we are now beyond the point where that is possible. It grows instead from a common commitment to universal rights, rights which are shared by an overlapping consensus of commitment although grounded and justified differently by the different faiths behind them.⁶ Second, the achievement of this compact does not come through the process of a general dilution of beliefs, as in the case of civil religion moving from Protestantism to "Judeo-Christian" theism. It comes through the process of a particular concentration of universal rights and mutual responsibilities, within which the deep differences of belief can be negotiated. Third, the fact that religious consensus is now impossible does not mean that moral consensus (for example, "consensual" or "common core" values in public education) is neither important nor attainable. It means, however, that moral consensus must be viewed as a goal, not as a given; something to be achieved through persuasion rather than assumed on the basis of tradition.

Doubtless, further questions are raised by these three points. Do all the different faiths mean the same thing when they affirm common rights? Do all have an adequate philosophical basis for their individual affirmations? Are all such divergences and inadequacies a matter of sheer indifference to the strength and endurance of the compact? Will such a principled pact always be enough in practice, to keep self-interest from breaking out of the harness? The probable answer in each case is No, which is a reminder of both the fragility of the historical achievement of religious liberty for all and the sobering task we face if we would sustain such freedom today. Indeed, the challenge might appear quixotic were it not for the alternatives.

Expressed differently, chartered pluralism owes much to John Courtney Murray's valuable insistence from which the title of book is taken,

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that the Religious Liberty clauses are "articles of peace" rather than "articles of faith."⁷ But Father Murray's distinction must never be widened into a divorce. For one thing, the articles of peace are principled before they are procedural. They derive from articles of faith and cannot be sustained long without them. Civility is not a rhetoric of niceness or a psychology of social adjustment, but discourse shaped by a principled respect for persons and truth. For another, articles of peace should not be understood as leading to unanimity, but to that unity within which diversity can be transformed into richness and disagreement itself into an achievement that betokens strength. In the words of the introduction to the Williamsburg Charter:

We readily acknowledge our continuing differences. Signing this Charter implies no pretense that we believe the same things or that our differences over policy proposals, legal interpretations and philosophical groundings do not ultimately matter. The truth is not even that what unites us is deeper than what divides us, for differences over belief are the deepest and least negotiated of all.

The Charter sets forth a renewed national compact, in the sense of a solemn mutual agreement between parties, on how we view the place of religion in American life and how we should contend with each other's deepest differences in the public sphere. It is a call to a vision of public life that will allow conflict to lead to consensus, religious commitment to reinforce political civility. In this way, diversity is not a point of weakness but a source of strength.⁸

Understood properly, the concept of chartered pluralism is critical to reforging that aspect of the public philosophy that bears on questions of religion and American public life, especially in the absence of any demonstrable alternative. It is therefore critical to keeping democracy safe for diversity. If it gains acceptance in the three main arenas of conflict—public policy debates, the resort to law and public education—and if it succeeds in addressing their problems constructively, it could well serve as

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a public philosophy for the public square, truly a charter for America's third century of constitutional government.

Fourth, it is objected that *chartered pluralism is soft on conflict and therefore essentially a form of pacifism*. This objection, often tied in with the first and third objections, is particularly common among political activists. At its heart is the concern that achieving consensus or committing oneself to the rights of others—especially those of one's enemies—is a dangerous and defeatist form of weakness. As, say, with the nuclear freeze proposal, the fear is that recognition of any principled pact with one's opponents is a sure way of "freezing in the imbalance." Or, to change to the sporting metaphor adopted in one conservative memo, "It is comparable to calling the game at the bottom of the fourth with the score: ACLU 10; Evangelicals 1."

At the root of this objection is a misunderstanding of the purpose of chartered pluralism. Contrary to suspicions of milk-toast civility and fear of public nastiness, the goal of chartered pluralism is to strengthen debate, not to stifle it. What we have now is not debate. It is not even a shouting match between two sides. It is only different sides shouting into direct-mail megaphones about their opponents to the supporters on their own side.

Properly understood, chartered pluralism might be described as the equivalent for religion and public life of boxing's "Queensberry rules." Within the "ring and rules" of religious liberty's "3 Rs" (rights, responsibilities, and respect), the Religious Liberty clauses of the First Amendment act as "articles of peace" rather than "articles of faith"—the public setting for a civil but robust form of political engagement in which disagreement becomes an achievement and diversity remains a source of strength.

Chartered pluralism is not pacifism. It provides deep freedom for principled contention between deep differences that make a deep difference.

Fifth, it is objected that *chartered pluralism is soft on realism and therefore essentially a form of idealism*. Like the fourth objection, this one is well represented at both ends of the political spectrum and even in the

middle. In its unreflective form it is so common that it may even be the majority opinion. Its appeal is simple. In an age of macho-style *realpolitik*, all that matters is political and judicial activism. Beat them at the ballot box. Sue them to their knees. First principles are fine as artillery "symbols" in the great blitzkrieg of ideas, but to be expected to follow them would be as archaic as a knight's code in the conditions of modern war.

At the root of this objection is a willful ignorance of a simple premise of political freedom: Freedom is ultimately best sustained, not by the legislation of rights, but by the cultivation of roots—those first principles, beliefs and ideals necessary to nourish an ongoing commitment to freedom and law in free societies that would remain free. That is why "We the people" must never be reduced to "We the judges and attorneys."

This point is often forgotten today by liberal and conservative activists alike. But it would have united thinkers as divergent as Edmund Burke and Jean-Jacques Rousseau. It is why James Madison saw that, without first principles, the Constitution is only a "parchment barrier." It is behind Alexis de Tocqueville's assertion that American freedom would depend on American mores, or "habits of the heart," rather than law. It underlies the warnings of contemporary prophets such as Walter Lippmann and Alexandr Solzhenitsyn. Or, as Justice Antonin Scalia put it simply, speaking of the relationship of freedom, virtue and rights, "In the last analysis, law is second best."⁹

Chartered pluralism is not idealism. In insisting that rights derive from and are sustained only by first principles, it is actually more realistic than its critics. It thus seeks to restore the balance between Constitution, courts, and the ongoing consensus of the citizens that will be vital to the republic.

Consequences and Outcomes

The last step in the argument is to set out some of the foreseeable principles and pitfalls that ought to shape prudential judgments as to the best way forward through the controversies.

First, there are three *necessary conditions* for a constructive solution such as chartered pluralism to be politically successful in achieving justice. Solid concepts and good will are not enough. What is required is intellectual foresight that will anticipate the problem before it becomes full-blown; moral courage that is willing to tackle problems not necessarily considered "problematic" on the current political agenda; and magnanimity that in the present situation will act generously, regardless of its own political position, with regard to the interests of others and especially those of the weaker parties.

Second, there are two *unlikely outcomes*. These are outcomes which are all but inconceivable and worth stating only because they form the stuff of activist propaganda and counterpropaganda. They are that the conflicts should, on one hand, degenerate into Belfast-style sectarian violence or, on the other hand, result in an Albanian-style repression of religion, especially in the public square. The combined logic of America's historic commitment to religious liberty and the depth of religious diversity today makes these outcomes virtually impossible.

Third, there are two *undesirable outcomes*, in the sense of two broad possibilities that might occur should there be no effective resolution of the current conflicts over religion and public life. The milder, shorter term possibility is that there could be a *massive popular revulsion* against religion in public life. This could take the form of A-plague-on-both-your-houses reaction to religious contention and therefore lead, ironically, to a sort of naked public square created, not by secularists or separationists, but by a wrongheaded overreaction to an equally wrongheaded Christian overreaction.

The more drastic, longer term possibility is that continuing conflict could lead to the emergence of a *two nation division* in American life, with all conservative forces favorable to religion and all progressive forces hostile. A short time ago, such a possibility would probably have been dismissed summarily. But for anyone who appreciates the effects of two-nation divisions on European countries such as France, the implications of

the 1988 Presidential campaign are sobering. The cultural fissures are worth monitoring.

Fourth, there are two *unfortunate outcomes*, in the sense of two broad possibilities that might occur even if chartered pluralism succeeds or if current conflicts simply fade away without apparent damage to national life. The first possibility is that, in the generally civil conditions of pluralism, the way is opened for some faith or worldview that would play the game only to win the game and end the game for others (existing candidates from the secular Left and the religious Right are equally dangerous here).

The second possibility is that, in the same civil conditions of pluralism, civility will itself become so corrupted that, in turn, pluralism is debased into a relativistic indifference to truth and principle. The result would be a slump into apathy, the logic of laissez-faire freedom gone to seed. The outcome would be that corruption of the republic from within of which the framers warned.

For some Americans, these dangers only confirm the risks of chartered pluralism they feared all along. But mention of the framers is a reminder that the risks are not new. They were built into the experiment from the very start. Such risks are the reason why the experiment is open-ended, and why the task of defending religious liberty is never finished.

The Williamsburg Charter states, "The Founders knew well that the republic they established represented an audacious gamble against long historical odds. This form of government depends upon ultimate beliefs, for otherwise we have no rights to the rights by which it thrives, yet rejects any official formulation of them. The republic will therefore always remain an 'undecided experiment' that stands or falls by the dynamism of its non-established faiths."¹⁰ As so often, Tocqueville had seen this point earlier and applied it to the two great revolutions of his time. "In a rebellion, as in a novel," he wrote, "the most difficult part to invent is the end." [S 427]

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¹See the Williamsburg Charter Public Opinion Survey on Religion and American Public Life.

²Harold L. Hodgkiasn, *California: The State and its Educational System* (The Institue for Educational Leadership, Washingotn, D.C., 1986).

³See Harold L. Hodgkiasn, *All One System: Demographics of Education, Kindergarten through Graduate School* (The Institute for Educational Leadership, Washington, D.C.).

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⁵Walter Lippmann

⁶The Williamsburg Charter (The Williamsburg Charter Foundation, Washington, D.C., 1988) p. 8.

⁷*West Virginia State Board of Education v. Barnette* 319 U.S. 624 [1943].

⁸Steve M. Tipton "The Church as a School for Virtue" (*Daedalus*, Spring, 1988) pp. 170, 171.